

HONORABLE BRIAN D. LYNCH

HEARING DATE: WEDNESDAY, DECEMBER 18, 2019
HEARING TIME: 9:00 A.M.
LOCATION: TACOMA, COURTROOM I
RESPONSE DATE: WEDNESDAY, DECEMBER 11, 2019

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

PUGLIA ENGINEERING, INC.,

Debtor.

No. 18-41324-BDL

FIRST AND FINAL APPLICATION FOR
COMPENSATION BY BUSH
KORNFELD LLP

Bush Kornfeld LLP (“Bush Kornfeld”), attorneys for Puglia Engineering, Inc. (“Debtor”), debtor-in-possession herein, makes this first and final application (“Application”) for compensation in the above-captioned bankruptcy case (the “Bankruptcy Case”).

Bush Kornfeld respectfully requests that the Court enter a final order allowing Bush Kornfeld’s attorneys’ fees and costs for the time period of April 14, 2018 through November 22, 2019 in the respective amounts of \$361,593.00 and \$8399.22. Of this, \$180,705.85, comprised of \$173,620.80 in fees and \$7,085.05 in costs has been paid pursuant to this Court’s Order Approving Interim Payment Procedures (“Interim Payment Procedures Order”) (Dkt. No. 345). Bush Kornfeld further requests entry of an order directing disbursement of Bush Kornfeld’s pro rata share of funds in the Approved Carveout for Chapter 11 Professional Fees and Costs, as those terms are defined and used in this Court’s Order Authorizing Disbursement of Cash Collateral (Dkt. 807).

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Attached hereto as Exhibit A is a detailed account of the services provided and costs incurred or to be incurred by Bush Kornfeld in this case from April 14, 2018 through November 22, 2019.

In support of this Application, Bush Kornfeld represents as follows:

1. Date of Order Authorizing Employment. The Court appointed Bush Kornfeld as Debtor's counsel effective May 15, 2018 (Docket No. 149).

2. Compensation and Reimbursements Previously Allowed and Paid. This is Bush Kornfeld's first application for compensation. The amount of \$180,705.90 has already been paid pursuant to the Interim Payment Procedures Order. This Application seeks final approval of those payments and approval of payment of the remaining, unpaid fees and costs.

3. Amount of Unencumbered Funds in the Estate and Source of Payment for Requested Compensation. As of the date hereof, Bush Kornfeld held approximately \$1,115.50 in its trust account. In addition, there is a court-approved carve-out in the amount of \$95,000 from which professional fees and costs will be paid.

4. Other Professionals Whose Employment Has Been Authorized. In addition to Bush Kornfeld, the Court authorized the employment of the following professionals in the Chapter 11 case:

Professional	Representing	Role	Approval Date	Docket No.
Bush Kornfeld LLP	Puglia	Bankruptcy Counsel	05/15/18	149
CKR LLP	Committee	Lead Counsel	08/02/18	344
Commenda Asset Resolution Partners, LLC	Puglia	Investment banker	02/15/19	524
DBS	Committee	Local Counsel	05/31/18	219
Larson Gross PLLC	Puglia	Accountants	07/16/18	312
McKool Smith	Committee	Litigation Counsel	07/26/18	333
Orse and Company	Puglia	Financial Advisor	07/20/18	324
Seyfarth Shaw LLP	San Francisco Ship Repair, Inc.	Special Counsel	02/14/19	522
The Tracy Law Group	San Francisco Ship Repair, Inc.	Bankruptcy counsel	06/08/18	242

Professional	Representing	Role	Approval Date	Docket No.
Thorson Barnett & McDonald PC	Puglia	Special Counsel for ERISA matters	08/17/18	355

5. Summary of Services Provided, Result and Benefit to the Estate.

Following is a summary of the time and fees associated with each category of services that Bush Kornfeld provided during the case from January 1, 2018 projected through the close of the case.

Name of Timekeeper	Initials	Hourly Billing Rate
Thomas A. Buford	TAB	\$340
James L. Day	JLD	\$510
Aditi Paranjpye	AP	\$325
Christine Tobin-Presser	CMT	\$350

CATEGORIES	TOTAL HOURS	TOTAL DOLLARS
Claims Analysis and Objections to Claims	3.70	1,887.00
Contested Matters	14.80	7,497.00
Contract/Lease Assumption/Rejection	8.40	4,284.00
Disclosure Statement and Plan Process	108.90	51,705.00
Employment and Fee Application Objections	.50	255.00
Fees	16.30	8,185.00
Financing and Cash Collateral	34.80	16,592.00
General Administration	59.80	22,083.00
Relief from Stay	.30	153.00
Sales of Assets	64.50	31,926.00

Bush Kornfeld provided a variety of services during the time period covered by this Application, the details of which are set forth in the attorney time records attached hereto. A narrative summary of those services follows.

a. Plan and Disclosure Statement. Bush Kornfeld spent significant time working with the client to discuss, develop and prepare a confirmable plan of reorganization and an accompanying disclosure statement. Bush Kornfeld worked closely with the debtor and its financial advisor to prepare financial projections to support the proposed plan payments. Bush Kornfeld also researched the legal distinction between a true lease and a financing transaction, as it believed that one creditor

1 whose claim was nominally based upon a lease, was actually a secured financing transaction. The
2 distinction allowed the claim to be classified in a manner that was more manageable under the plan.
3 During the process, Bush Kornfeld also spent significant time seeking to negotiate the terms of an
4 agreed plan with both Washington Federal, the primary secured creditor in this case, and the
5 Unsecured Creditors Committee (the "Committee").

6 Eventually, Bush Kornfeld filed a proposed plan and disclosure statement that would have
7 permitted the Debtor to maintain its operations, continue to employ 70-80 worker, while repaying all
8 secured and priority claims in full and returning some dividend to unsecured creditors. The plan
9 would have created a creditor trust, into which various estate assets would have been assigned for
10 liquidation by a post-confirmation trustee, with the proceeds being distributed to unsecured creditors.
11 Unfortunately, the Debtor's operations could no longer be sustained, the case was converted and
12 creditors were not given the opportunity to actually vote on the proposed plan.

13 b. Sale Process. Bush Kornfeld also spent significant time in connection with a process
14 seeking a buyer for the Debtor as a going concern. Bush Kornfeld worked with the Debtor and
15 counsel for the Committee in identifying and interviewing multiple firms as candidates to conduct the
16 sale process on the Debtor's behalf. Ultimately, the Debtor selected Commenda Capital as its sales
17 agent. Thereafter, Bush Kornfeld worked closely with representatives of Commenda on the sale
18 process, prepared a non-disclosure agreement for interested buyers to execute, and worked with
19 Commenda representatives on due diligence materials. Bush Kornfeld also drafted proposed bid
20 procedures and a form of an asset purchase agreement for buyers to utilize. Bush Kornfeld also
21 researched the possible claims the various pension funds could assert if a sale caused a complete
22 withdrawal from the fund, including whether any could successfully assert an administrative expense
23 claim. Along the way, Bush Kornfeld participated in numerous calls with prospective buyers, and led

1 negotiations with Washington Federal seeking its approval for an offer from one of the buyers that
2 would have allowed the Debtor to remain a going concern. Unfortunately, the bank declined the
3 proposed offer, and a sale could not be consummated prior to the cessation of the Debtor's operations.

4 c. Port of Bellingham Lease. During the same period of time, Bush Kornfeld worked
5 closely with the Debtor and representatives of the Port of Bellingham to obtain voluntary extensions
6 of the time within which to assume or reject the lease of the debtors operating premises. Maintenance
7 of the lease was critical to the Debtor's continued operations, and Bush Kornfeld worked diligently
8 with Port representatives to maintain the ability to assume the lease all the way up through the time a
9 trustee was appointed and took over the management of the case.

10 d. Cash Collateral Use. Also during this time, Bush Kornfeld worked with the debtor and
11 its financial advisor, and representatives of Washington Federal, to extend the Debtor's right to
12 continue to use cash collateral. Later, the negotiations included representatives of the company that
13 was bonding a job as to which Pierce County was the customer. These efforts were successful, as the
14 Debtor continue to be authorized to use cash collateral through the appointment of chapter 11 trustee.

15 e. Response to Motion to Convert/Dismiss. Bush Kornfeld also filed a response to U.S.
16 Trustee's motion to convert or dismiss the case, on the basis that cause did not exist for such drastic
17 relief and would not be in the best interests of creditors. At the time, the Debtor still believed that it
18 could maintain operations going forward. After a hearing and discussions with the principal parties,
19 on behalf of the Debtor Bush Kornfeld agreed to entry of an order for appointment of a chapter 11
20 trustee.

21 6. Financial Condition of the Estate. Bush Kornfeld has not been aware of the financial
22 condition of the estate following the appointment of the chapter 11 trustee and the subsequent
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1 conversion of the case. However, Bush Kornfeld participated in settlement discussions with
2 Washington Federal that led to the fixing of a carve-out for chapter 11 professional fees of \$95,000.

3 7. Status and Progress of Case. On March 20, 2019, David Stapleton (the “Trustee”) was
4 appointed as Chapter 11 trustee. Docket No. 587. On March 28, 2019, the Bankruptcy Case was
5 converted to a case under Chapter 7. Docket No. 625. Future tasks and projection of future fees and
6 expenses will be identified by the Trustee.

7 8. Tasks Remaining and Projection of Future Fees and Expenses. See Section 7, above.

8 9. The services provided and costs incurred on Exhibit A were performed on behalf of the
9 Debtor and its Estate and not on behalf of a creditor or other entity herein.

10 10. Pursuant to 11 U.S.C. § 504, Bush Kornfeld will not share such compensation or
11 reimbursement of expenses applied for herein with any other person or firm.

12 DATED this 25th day of November, 2019.

13 BUSH KORNFELD LLP

14 By /s/ James L. Day

15 James L. Day, WSBA #20474

16 Thomas A. Buford, WSBA #52969

17 Christine M. Tobin-Presser, WSBA #27628

18 Aditi Paranjpye, WSBA #53001

19 Attorneys for Puglia Engineering, Inc.

20 **DECLARATION**

21 I am a partner at the law firm of Bush Kornfeld LLP, and am one of the attorneys responsible
22 for the representation of the Debtors in the above-captioned proceeding. I have personal knowledge
23 of the facts stated herein, and am competent to testify to them. I make this declaration in conformance
with applicable sections of the Bankruptcy Code and Bankruptcy Rules, and Rule 2016 of the Local
Rules of Bankruptcy Procedure.

1 I declare under penalty of perjury under the laws of the State of Washington that the foregoing
2 is true and correct.

3 DATED this 25th day of November, 2019.

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5 /s/ James L. Day
James L. Day
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